



**General Purposes Committee**

**Tuesday 19 May 2015**

**Item No 6**

**Consultation on Primary Authority Partnerships relating to  
Devolved Regulatory Responsibilities of Local Authorities**

**Report by Director, Resources**

**1 Purpose of Report**

To ask the Committee to consider the submission of comments to the Scottish Government concerning the Consultation on Primary Authority Partnerships relating to Devolved Regulatory Responsibilities of Local Authorities.

**2 Background**

The Scottish Government has published the above mentioned consultation. It follows through on legislation designed to improve the way regulation is applied in practice across Scotland.

A specific and additional proposal emerged from a consultation in 2012 on Proposals for the Better Regulation Bill, namely that some equivalent of Primary Authority Partnerships – which were introduced by the UK Government through the Regulatory Enforcement and Sanctions Act 2008, and have been amended by the Enterprise and Regulatory Reform Act 2013 – should be adopted in Scotland, in the context of Scottish regulation. Primary Authority allows a business to form a partnership with one local authority in order to receive tailored support in relation to a range of regulations; and can assist a business by issuing assured advice, co-ordinating enforcement action across all locations used by the business, and developing an inspection plan for the business as a whole.

In response to the original proposal, this Council recommended that the Civic Government activities should not be targeted and it is confirmed that they have been removed from scope as other means are available to support and deliver consistency in this area while remaining sensitive to local circumstance.

However, in recognition of business views that Civic Government Licensing should be included in the scope of primary authority partnerships, the Scottish Government invite views on whether there are any specific aspects which could be within scope while still retaining the ability for local authorities to maintain legitimate variation and if so, whether having multiple local authorities responsible for different aspects of the same licence is both practical and desirable

The Consultation relates to Age-restricted sales (for devolved matters); Agriculture; Animal feeding-stuffs hygiene and standards \*; Animal establishments Animal health and welfare Environmental protections Farm animal health; Food safety and hygiene Food standards; Housing and Pollution control. \* is not listed separately by the Better Regulation Delivery Office (BRDO). Reserved matters in scope within UK scheme are Explosives licensing; Health and safety; Petroleum licensing; Product safety; Metrology and Fair Trading; and Road Traffic and General Licensing.

A copy of the Consultation has been placed in the Members' Library.

The comments made for the initial stages of the Bill are shown in **Appendix 1** hereto. The questions contained in the consultation are listed in **Appendix 2** with some answers. However, unless the concept of PA is supported, there appears little point in providing answers.

The Police, Fire and Rescue and Council Officers have been consulted.

The Head of Housing states that, there is no issue with the intent to implement a Scottish specific Primary Authority scheme for the devolved regulatory responsibilities of local authorities in Scotland, but main concerns are in the enforcement duties it will require of the local authority and associated costs, and difficulties in cost recovery.

(Housing provisions ie for area improvement, responsibilities of landlords, compulsory purchase and houses in multiple occupation, are in scope.)

The Trading Standards Manager broadly shares these concerns.

### **3 Resource Implication**

The specific resource implications of this report do not impact on the Council at this stage.

#### **3.1 Risk implications**

There are no risk implications at this stage.

## **3.2 Policy Implications**

### **Strategy and Consultation**

The requests in this report do not relate to a strategy. Consultation with Officers has taken place.

## **3.3 Equalities and Sustainability**

An equalities impact assessment has not been carried out. There are no sustainability implications.

## **3 Conclusion**

Primary Authority allows a business operating in two or more local authorities to form a legally recognised partnership with one local authority in order to receive tailored advice and support in relation to a range of regulatory functions and the consultation seeks views on the proposed scope of a primary authority scheme in Scotland and how it would operate in practice.

The consultation runs for the standard 12 week period.

Comments made in respect of the initial proposals reflect the kind of problems that pursuing this concept will generate.

The responses to the questions reflect differences. But, concern is expressed that overly onerous obligations and restrictions may be placed on particularly smaller authorities and the prospect of potential differences of opinion and direction across differing regulatory regimes. The view has been expressed against entering into PAPs with locally headquartered businesses who trade nationally, given the disproportionate amount of time the workload required in drafting protocols. Also, there is the payment aspect. Under the PA system, a PA would be paid by a business for providing all the legal/enforcement advice in specific legislative areas (Fair Trading, Pricing, Age-restricted sales etc), advice which the business would subsequently rely upon, if an enforcement issue was raised by another LA. However, it is conceded that undoubtedly there are PAPs that appear to work well.

## **4 Recommendation**

It is recommended that the Committee consider the report.

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Background Papers - **Consultation Paper and Questions**



## Appendix 1

### Consultation on Primary Authority Arrangements relating to the Devolved Regulatory Responsibilities of Local Authorities in Scotland

#### Answers

**Q.1 - In principle, do you favour the introduction of Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland? Why? What impact would this have on current local discretion?**

No. Because it is likely that it will have a detrimental effect on the ability of local licensing authorities to control essentially local situations. Especially in relation to Civic Government licensing, where the emphasis is on the prevention of crime and the preservation of public order and public safety, where the enforcement powers are exercised by the Police, there will be uncertainty as to who the enforcer is and duplication of effort. There will also be delays in relation to enforcement through having to defer to the Primary Authority and it probably being remote. It is unreasonable propose this approach so soon after the concept was rejected by the Scottish Parliament. There are significant resource issues for smaller LAs in acting as a PA even if these are fully funded by the partner business. There remains the risk of regulatory capture. What would happen in relation to premises licensed by Fire authorities now that this is a single service for Scotland?

**Q1A - If you do not support, in principle, the introduction of Primary Authority arrangements for the devolved regulatory responsibilities of local authorities in Scotland, do you favour an alternative model which would optimise consistency and compliance, including costs and administration? Please provide details.**

A better model can be arrived at by carrying out a review of the legislation, in consultation with local authorities (and other stakeholders) throughout Scotland; and the introduction of Best Practice Guidance under the existing legislation. There is no need to fragment it. It is unavoidable that there will be differences of approach depending on the local need. This is proposed in another part of the Bill in relation to the power to set national standard for example for street traders to be used by Local EH Departments when responding to s39 requests

**Q2 - The UK approach lists relevant regulatory responsibilities in Schedule 3 to the Regulatory Enforcement and Sanctions Act. Should relevant devolved regulatory responsibilities of local authorities in Scotland also be specified in legislation as "in scope"? Why?**

No. It is inappropriate to regulate activity in this way. That is the responsibility of the licensing authorities .

**Q2A - Which specific devolved regulatory responsibilities of local authorities in Scotland should be specified in legislation as "in scope"? Why?**

No Civic Government activity. No Food control related Environmental Health (Scotland) issues until the new Food Body is established as this could fetter the discretion of that organisation in the future. There may be other issues that have not been identified that ought not to be included.

There appears to be little evidence of demand for the extension of categories across the board. It appears unwise to base the way forward on such scant information with undue haste.

**Q2B - Are there any specific devolved regulatory responsibilities of local authorities in Scotland which should not be specified in legislation as "in scope"? Please explain your rationale for such exclusion?**

All. The Police provide the enforcement but they do not appear to have been consulted to any large extent. Confusion and a lack of confidence will develop owing to the lack of powers.

**Q3 - Should business eligibility to engage in a Primary Authority Partnership be restricted to "any business, charity or other organisation that is regulated by two or more local authorities in respect of a relevant function"? Please explain your view.**

Yes.

These are largely discretionary powers to which the LAs have given much thought. All of that will have to be swept aside and reviewed. The transitional phase is likely to be problematic. The spread in the cost of enforcement is likely to be higher.

**Q4 - Should Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland follow the current or planned UK model in terms of the focus on assured information and advice, inspection plans and enforcement action? Please explain your view, particularly in relation to any scope to optimise consistency and compliance, including costs and administration.**

If it is decided to go ahead, there should be greater thought afforded to the concept. Full dialogue without the pressure of a threat of any 2<sup>nd</sup> reading of a bill.

**Q5 - Should Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland follow the UK model in terms of fees and charging regimes? If not what alternative model should be adopted? Please explain your view.**

If it is decided to proceed regardless, the position ought to be one of Full Cost of Provision of Service recovery basis.

**Q6 - What, if any, additional considerations should be taken into account in considering whether or not to introduce Primary Authority arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland? What measures, if any, should be considered to avoid the potential for forum shopping? Please explain your view.**

This is a real danger. Nothing can be done to prevent it.

There appears to be a notion afoot that a national licence ought to be introduced, where hitherto, the consensus has always been that regulation should be reviewed from the stronger position ie inside the framework of the current legislation. Naturally, the commercial sector will be selective in whom they seek advice and guidance.

All of this gives the trade a false expectation of successful introduction and implementation of and an improvement through intervention on their behalf.





## APPENDIX 2

### Consultation on Primary Authority Partnerships Relating to Devolved Regulatory Responsibilities of Local Authorities

#### CONSULTATION QUESTIONS

**Question 1 – Do you agree that the categories of regulation set out in the consultation document (paragraph 18) should be in scope for primary authority partnerships in Scotland?**

Yes ☐ No ☐

If no, please explain your answer

Comments Partly : the matters of Food Safety & Hygiene and Food standards are likely to benefit from PAPs in attaining transparency, consistency and proportionality of enforcement. However, Food Standards Scotland was established in April 2015 and this could fetter the discretion of that organisation in the future.

On the other hand, many of the matters relating to Environmental Protections are more likely to be essentially local situations depending on individual circumstances e.g., noise sensitive neighbours etc.

**Question 2 – Does the legislation listed in Annex A represent the main primary legislation for the regulatory functions which are proposed to be in scope for primary authority partnerships in Scotland?**

Yes ☐ No ☐

If no, please provide more details

Comments

**Question 3** – Are there any specific section of the Civic Government (Scotland) Act 1982 which could be included as in scope while still retaining the ability for local authorities to maintain legitimate variation?

Yes ☐ No ☒

If yes, please list the relevant sections of the Act and explain your view

Comments The licensing of street traders with specific regard to Food matters may be assisted by the introduction of a PAP where businesses are sufficiently large to have units trading in multiple authorities, however in a small LA where the vast majority of businesses are family businesses trading within the boundary of one LA the availability of a PAP would be meaningless.

The application to Public Entertainment Licensing for 'mobile' events who rotate across many LAs e.g., funfairs could benefit.

**Question 4** - Would an arrangement including specific aspects of Civic Government Licensing be workable?

Yes ☐ No ☒

Please explain your answer.

Comments The local authorities individually exercise the generally discretionary powers in different ways; and the PA is likely to create problems across Scotland; and under the current proposals a PAP is considered unlikely to influence those matters which require a licence but would allow improved consistency once the need for licensing has been established.

**Question 5** – Do you agree that the regulations with regards to carrier bag charging should also be included as in scope?

Yes ☒ No ☐

**Comments** The vast majority of retailers locally needing to comply are small shops with few staff and their business is local – PAPs are highly unlikely in these situations. A proportionate enforcement policy is needed. The big stores (supermarkets etc), for which the legislation was really brought into being for, are almost entirely headquartered in England, hence any PAP will be with LAs there.

**Question 6** – Are there any other devolved regulatory areas of local authorities which should be considered for inclusion in scope?

Yes ☐ No ☒

If yes, please provide details and the associated legislation:

**Comments**

**Question 7** – Should the definition of ‘enforcement action’ contained in the Act additionally be supported by an explicit list of all sections of relevant legislation citing the specific actions which count as ‘enforcement action’?

Yes ☐ No ☒

Please explain your answer

Comments The definition provided is considered sufficient.

There is a danger in being either overly prescriptive or exclusive by drawing up an explicit list

**Question 8** – Do you agree that a Scottish primary authority partnership scheme should enable the primary authority to direct the enforcing authority to take action?

Yes ☐ No ☒

Comments A PAP should not remove the autonomy of the enforcing LA for the specific issue.

**Question 9** – Do you agree that the primary authority should have five working days to respond to proposed enforcement action?

Yes ☐ No ☐

If not, what alternative timescale do you propose? Please explain your view.

Comments A maximum of five working days for a Primary Authority to respond is considered too onerous, particularly in the early stages of the partnership.

Alternative: a requirement to acknowledge within 5 working days and respond within a longer time period 14 / 21 days. Small LAs acting as PAs are likely to have a reduced number of staff who are the lead officer for a business and other demands on their time are likely to require a greater response time to ensure robust and reliable advice is issued. It may be that in complex matters the PA would require to seek further advice e.g., from a Public Analyst or other specialist .

**Question 10** – If a primary authority has powers to direct, are there any circumstances, other than those described in paragraph 35) where this requirement should not apply?

Yes ☐ No ☐

Comments Powers to direct should not apply

**Question 11** - If a primary authority did not have powers to direct an enforcing authority not to take action, which model would provide the best process for engagement on enforcement action?

Notification only ☐

Notification and discussion ☐

Notification and discussion with dispute mechanism ☐

Comments If there are no powers to direct Notification and discussion is the preferred process, a dispute mechanism should not be required in this instance.

If powers to direct then a dispute mechanism is essential. It is likely the number of dispute will be v. small in number. A dispute mechanism should be via a national mechanism; requiring each PAP to develop a local dispute mechanism is considered cumbersome.

The financial element of dispute require clarification

**Question 12** – is there any other option which you would suggest?

Yes ☐ No ☐

If yes, please provide details

Comments

**Question 13** - Which of the options do you prefer?

- a. ☐
- b. ☐
- a. or b. only ☐
- a. or b. with c. as appropriate to the appeal ☐

Please explain your answer

Comments

**Question 14** – Are there any other alternative options which you would suggest for an appeals panel or body?

Yes ☐ No ☐

Comments

**Question 15** – Should an appeals panel include an independent business representative?

Yes ☐ No ☐

Comments The provision of an independent business representative may assist with transparency and proportionality issues. However it may result in delays in the process. The identification of an ‘ independent’ suitable to all parties may be difficult particularly if the nature of the event is specialised or commercially sensitive e.g., a recipe requires to be disclosed for food standards reasons.

**Question 16** - Should an independent body or individual regulate agreements and oversee appeals in order to ensure fairness?

Yes ☐ No ☐

Comments

**Question 17** – Do you agree with the proposed appeals process?

Yes ☐ No ☐

Comments The proposal is broadly supported although clarity / further explanation is required

Para 43. “.....applicants apply for consent.....” to whom would such application be made

Para 43 . 2) requires the matter to be considered within 28 days, there is no stated time frame for determination.

**Question 18** – Do you think that timescales for application are appropriate?

Yes ☐ No ☐

Please explain your answer

Comments In terms of time scales as indicated above [ Q9] the proposed 5 working days is considered too onerous for a PA

“.....28 days.....” working / calendar days?

**Question 19** – Do you think that the timescales for determination of a decision are appropriate?

Yes ☐ No ☐

Please explain your answer

Comments There is a stated time frame for consideration but none for determination clarification required.

**Question 20** – Do you agree with this approach for legal agreements?

Yes ☐ No ☐



Comments

**Question 21** – Would it be helpful to have additional guidance on cost recovery?

Yes ☒ No ☐

Comments

**Question 22** – Please provide any comments on the partial Business and Regulatory Impact Assessment (Annex B)

Comments